

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY,

JULY 29, 2008

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL, Commissioner
CURTIS L. ETHERLY, JR., Commissioner
Gregory Jeffries, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

This transcript constitutes the minutes from the Public Meeting held on July 29, 2008.

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P-R-O-C-E-E-D-I-N-G-S

10:11 a.m.

CHAIRPERSON MILLER: Okay. I'm going to open our meeting for the Board of Zoning Adjustment for July 29, 2008. The Membership is a little bit different than on the FMBZA, so I'm going to do the introductions again.

My name is Ruthanne Miller, I'm the Chair of the BZA. To my right is Mr. Marc Loud, to my left is Mary Oates Walker and joining us momentarily will be Shane Dettman. With us also is Mr. Cliff Moy and Beverley Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please, be advised that this proceeding is being recorded by a Court Reporter and is also webcast live.

1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room. Please, turn off all beepers
4 and cell phones.

5 Okay. While we are waiting for
6 Mr. Dettman to come out also, I want to make
7 an announcement with respect to how we are
8 going to be proceeding this morning with
9 respect to the decisions on the calendar, on
10 the agenda for the BZA today.

11 We have various Zoning
12 Commissioners on these cases and so they are
13 not all ready to go at the same time, because
14 of various people's schedules. So what we are
15 going to do is take Application No. 17708 of
16 Patricia T. Rosenman, which is No. 2 on the
17 Public Meeting agenda, and deliberate in that
18 case and then we will be addressing
19 Application No. 17780 Benco Center, LLC, which
20 has asked for a postponement and we will be
21 addressing that issue.

22 And after that, we will take a

1 break and then come back and deliberate on the
2 remaining cases on the agenda.

3 Okay. So, Mr. Moy, we are ready
4 for Application No. 17709.

5 MR. MOY: Yes. Thank you, Madam
6 Chair. That application, 17709, of Patricia
7 T. Rosenman is pursuant to 11 DCMR 3104.1, for
8 a special exception to allow a garage addition
9 to an existing one-family detached dwelling
10 under section 223. This is not meeting the
11 side yard requirements under section 405 in
12 the FH/TSP/R-1-B District. This is at
13 premises 3425 Garrison Street, N.W., Square
14 2032, Lot 94.

15 Staff notes that the application
16 has been amended to include zoning relief from
17 the side yard requirement, which is the Forest
18 Hills Tree and Slope Protection Overlay
19 District of section 1518.3. This is pursuant
20 to special exception relief under section 1520
21 standards.

22 As the Board will recall, on July

1 8, 2008, the Board completed public testimony,
2 closed the record and scheduled its decision
3 on July 29th. The Board requested additional
4 information to supplement the record. The
5 record was also kept open to receive comment
6 letters from the District Department of Parks
7 and Recreation, the Department of the
8 Environment and the Department of
9 Transportation's Urban Forestry Division.

10 The -- what is in your case
11 folders, Madam Chair, is the filing from the
12 applicant identified as Exhibit 31 and also a
13 filing from the Department of Parks and
14 Recreation, which is identified as Exhibit 32.

15 The Board is to act on the merits
16 of the application for special exception
17 relief and that completes the staff's
18 briefing, Madam Chair.

19 CHAIRPERSON MILLER: Thank you,
20 Mr. Moy. I think Ms. Walker is going to lead
21 the discussion on this case.

22 MEMBER WALKER: Madam Chair, in

1 this case, the applicant proposes to construct
2 a 16 foot wide garage addition to the west
3 side of the dwelling, which would exist --
4 reduce the existing 19 foot side yard to 3
5 feet.

6 The property is Zoned R-1-B, which
7 requires an 8 foot side yard under 405, but
8 because the property is located within the
9 Forest Hills Tree and Slope Protection Overlay
10 District, relief from the 8 foot side yard
11 requirement of 1518.3 is also warranted. And
12 the applicant is subject to the special
13 exception requirements of 1520.

14 The purpose of the Tree and Slope
15 Protection Overlays is to preserve and enhance
16 the park-like setting of designated
17 neighborhoods adjacent to streams or parks by
18 regulating alteration or disturbance of
19 terrain, destruction of trees and ground
20 coverage of permitted buildings and other
21 impervious surfaces.

22 Section 1520.1 sets forth the

1 guidelines for analyzing special exceptions
2 from the overlay requirements. I think here
3 we can incorporate by reference the analysis
4 in the Office of Planning's initial report
5 dated January 15, 2007, which is our Exhibit
6 24, which addressed each subsection of 1520.1.

7 To summarize, subsection (a)
8 limits tree removal, grading and topographical
9 changes to the maximum extent possible. The
10 Office of Planning notes that the applicant
11 proposes to remove a tree that is 4.5 feet
12 tall with a circumference of 18 inches and
13 removal of one small tree is not inconsistent
14 with the standards of the overlay.

15 Subsection (b) requires that there
16 be specific physical characteristics of the
17 lot that justify the exception. And here, the
18 lot's west property line slants inward toward
19 the rear, which reduces the side yard space.

20 Subsection (c) requires that the
21 building and overall site plan be consistent
22 with the purposes of the overlay and not

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1 adversely affect neighboring property.

2 The Office of Planning determined
3 that an addition to the west side of the
4 property will not adversely affect the
5 neighbor to the east. The neighbor to the
6 west is the National Park Service, which is
7 supportive of the application.

8 The initial design of the garage
9 would have reduced the side yard to 1 foot.
10 And at the request of National Park Service,
11 the applicant revised the plans to reduce the
12 overall size of the structure and provide a 3
13 foot side yard. And the Office of Planning
14 concluded that this project is consistent with
15 the overlay.

16 Subsection (d) authorizes this
17 Board to impose requirements it deems
18 necessary to achieve the purposes of the
19 overlay and it should be noted here that this
20 provision specifically references the Board's
21 authority to vary side yard requirements.

22 Section 1520.2 requires this Board

1 to submit the application to various District
2 agencies for review, including the Office of
3 Planning, the Department of Transportation,
4 the Department of Parks and Recreation,
5 Department of the Environment, as well as to
6 the National Park Service.

7 The Board requested comments from
8 each of these agencies, as required by 1520.2.
9 We have received a letter in support from the
10 Office of Planning dated July 1, 2008, which
11 is our Exhibit 28. In addition, the
12 Department of Transportation provided input to
13 the Office of Planning regarding the new curb
14 cut that will be required.

15 The Department of Transportation
16 had no significant concerns pointing out that
17 the curb cut would begin more than 60 feet
18 from the intersection. DDOT also noted that
19 curb cuts are not unusual in the area and
20 referenced the neighboring property to the
21 east, which has a circular drive accessed from
22 Garrison Street.

1 The Director of the Department of
2 Parks and Recreation filed a memorandum
3 stating that the application will have no
4 impact on Parks and Recreation property or
5 resources, and that is our Exhibit 32. And as
6 I previously mentioned, the National Park
7 Service provided input on the application to
8 the Office of Planning.

9 And finally, section 1520.3
10 requires that the applicant submit certain
11 materials, including a site plan and a Tree
12 Preservation Plan. The Board left the record
13 open in this case following the last hearing,
14 so the applicant could provide this
15 information.

16 The applicant submitted an amended
17 site plan which calculates the impervious
18 surface ratio of the lot as 33.4 percent.
19 This is within the limitation imposed by
20 1518.2 of 50 percent maximum impervious
21 surface coverage.

22 The applicant also submitted a

1 plan by a certified arborist for the
2 protection and preservation of a large oak
3 tree at the front of the property in public
4 space. The plan includes installation of a
5 wire tree protection fence and root pruning
6 and it covers a three year period. OP amended
7 site plan and the Tree Protection Plan are at
8 Exhibit 31.

9 I'll point out for the record that
10 we also received an ANC-3F report dated July
11 2, 2008 in support of the application at
12 Exhibit 27. And the applicant submitted
13 letters from several immediate neighbors
14 indicating that they have no objection to the
15 project, and they are collectively at Exhibit
16 23.

17 CHAIRPERSON MILLER: Thank you
18 very much. That was very, very, very
19 thorough. I think you basically said it all.
20 This applicant came a long way and finally got
21 the support of the neighbors, the ANC, Office
22 of Planning, etcetera, everybody you have

1 mentioned.

2 So I don't think there is much
3 more to add. Does anybody else want to add
4 anything?

5 VICE CHAIR LOUD: Just to echo
6 you, Madam Chair, that it was an excellent
7 presentation and I'm ready to vote when the
8 Board is.

9 CHAIRPERSON MILLER: Oh, yeah,
10 okay. Anything else? Thank you. Thank you
11 very much, Ms. Walker. And all those in favor
12 of --

13 MEMBER WALKER: There's no motion.

14 CHAIRPERSON MILLER: Whoops,
15 sorry. Would you like to do that?

16 MEMBER WALKER: Sure. I'll move
17 approval of Application 17709 for a special
18 exception to allow a garage addition to an
19 existing one-family detached dwelling not
20 meeting the side yard requirements of section
21 405 and 1518.3.

22 CHAIRPERSON MILLER: Second.

1 Further deliberation?

2 All those in favor of the motion
3 say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? And would you
7 call the vote, please?

8 MR. MOY: Yes, Madam Chair. The
9 staff would record the vote as 4-0-0. This is
10 on the motion of Ms. Walker to approve the
11 application, seconded by Ms. Miller. Also in
12 support of the motion are Mr. Loud and Mr.
13 Dettman. Madam Chair, we also have an
14 absentee ballot from Michael Turnbull, who
15 also participated on this application and his
16 absentee vote is to approve the application.
17 This would give a final resulting vote of 5-0-
18 0.

19 CHAIRPERSON MILLER: Thank you.
20 And this will be a summary order, since
21 there's no party in opposition.

22 MR. MOY: Very well.

1 CHAIRPERSON MILLER: Okay. And at
2 this point then, the Board will break and
3 return. Oh, no, I'm sorry. We were going to
4 address 17780. Do you want to just call that,
5 Mr. Moy?

6 MR. MOY: Yes, Madam Chair. That
7 application as you said is 17780 of Benco
8 Center, LLC. This is pursuant to 11 DCMR
9 3104.1, for a special exception to locate
10 required parking spaces on an adjacent lot
11 under subsection 2116.5. This is serving a
12 group of existing retail businesses in the C-
13 3-A District at premises 4510 through 4528
14 Benning Road, S.E., Square 5346, Lot 11.

15 Staff notes that this application
16 has been amended to include additional zoning
17 relief from sections 2117.12, which is the
18 parking space screening criteria, as well as
19 relief from 2108, which is the reduction of
20 required parking spaces.

21 I'll also note that the original
22 relief requested was amended to withdraw

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1 relief from 2101.1.

2 On July 1, 2008, the Board
3 convened this application in a Public Meeting
4 session. After deliberation, the Board
5 decided that additional information was needed
6 to supplement the record from the applicant.
7 The -- with a deadline of July 23, 2008, on
8 that date, July 23rd, the applicant filed a
9 letter requesting additional time, an
10 extension of time.

11 Subsequent to that, the applicant
12 filed supplemental information on July 25,
13 2008. So with that, I think the Board is
14 going to leave this with the -- the staff is
15 going to leave this for the Board. That's the
16 staff's briefing, Madam Chair.

17 CHAIRPERSON MILLER: Thank you,
18 Mr. Moy. In essence, we did ask for some
19 additional submissions at our hearing and set
20 a certain date and I think they came in a few
21 days late. And the applicant asked then if we
22 would consider this application at our special

1 meeting scheduled for this Friday, August 1st.

2 Now, we have all the documents in
3 the file as of now, so we could deliberate on
4 it today if we chose to, but I would suggest
5 that we do continue this until Friday, as we
6 have a meeting then and it would give us a
7 little more time to analyze the materials that
8 were submitted.

9 Is there a consensus on that?
10 Okay. Then the deliberation on Application
11 No. 17780 of Benco Center, LLC will be taken
12 up on August 1st at the Board's Special Public
13 Meeting that day.

14 Okay. And as I stated at the
15 beginning of this hearing, the Board is now
16 going to take a break and return when all the
17 Zoning Commissioners are here on the other
18 cases and when we are ready to take up
19 deliberation on the remaining cases on our
20 agenda. Thank you.

21 (Whereupon, at 10:27 a.m. a recess
22 until 11:40 a.m.)

1 CHAIRPERSON MILLER: Okay. Back
2 on the record. I think I'm going to announce
3 the order, so that everyone will know what's
4 coming. Again, we are waiting for another
5 Commissioner on a couple of cases, but we're
6 ready to go forward on some others.

7 The first case that we're going to
8 go forward with is Application No. 17779 of
9 James Word, and then we will take up
10 Application No. 17726 of Wisconsin Avenue
11 Baptist Church, and then 17774 of District-
12 Properties, and then 17786 of True Gospel
13 Church.

14 So, Mr. Moy, would you call the
15 Word Case, 17779, please?

16 MR. MOY: Yes, Madam Chair. That
17 Application No. is 17779 of James Ward --
18 Word, my apologies, pursuant to 11 DCMR
19 3103.2, for a variance from the lot area
20 requirements under subsection 401.3, to
21 convert a church building into an eight unit
22 apartment house in the R-4 District. This is

1 at premises 3408 Sherman Avenue, N.W., Square
2 2841, Lot 115.

3 Staff notes that the application
4 was amended to include variance relief under
5 section 401.11, which is the apartment house
6 conversion section.

7 On June 10, 2008, the Board
8 completed public testimony, closed the record
9 and scheduled its decision on July 29th. The
10 Board requested additional information from
11 the applicant to supplement the record. The
12 applicant did file. Actually, the applicant
13 made multiple filings.

14 The first is a filing on June 26,
15 2008, which is identified in the case folders
16 as Exhibit No. 30. The next two filings from
17 the applicant were filed July 3rd, which
18 exceeded the deadline of July 1st. These two
19 filings are in your case folders identified as
20 Exhibit 31 and Exhibit 32. And finally, the
21 last filing for the record, Madam Chair, is a
22 supplemental report from the Office of

1 Planning, which is identified as Exhibit 33.
2 The document is dated July 15th, which is late
3 by, I believe, two or three days. A deadline
4 of July 14th was established, that deadline.

5 So with that, the Board is to act
6 on the merits of the requested variance
7 relief. And that completes the staff's
8 briefing, Madam Chair.

9 CHAIRPERSON MILLER: Thank you,
10 Mr. Moy. This case does involve an area
11 variance and primarily the issue is why the
12 applicant should be granted variance relief
13 for an eight unit apartment house as opposed
14 to what is allowed as a matter-of-right.

15 And the applicant has, you know,
16 addressed the three prong variance test. They
17 have addressed, certainly, various reasons why
18 they think that the property is exceptionally
19 unique. And then the practical difficulty
20 element, I believe, is very much based on an
21 economics argument.

22 And I think that I would like to

1 hear from others, but the filings that were
2 made subsequent to the hearing were helpful,
3 but I believe that there still are outstanding
4 questions that the Board has in order to
5 really be able to assess the economics
6 involved in this case.

7 And the Office of Planning's
8 supplemental report at Exhibit 33 has noted
9 some of the same type of concerns that, I
10 believe, the Board has with respect to a
11 breakdown in understanding really of the costs
12 and how they are related to the question of
13 why this building can't be configured for
14 residential units as a matter of right.

15 I think that OP didn't find that
16 the questions were really fully answered and
17 I don't think the Board does, but I would like
18 to suggest that we give the applicant an
19 opportunity to see if they can address the
20 economic questions better.

21 These are always difficult issues
22 in BZA variance cases and the Board really

1 needs to understand in order to assess the
2 practical difficulty issue.

3 So one of the things I would like
4 to suggest is that we continue this hearing
5 until September and ask the applicant to
6 provide more proof as requested by Office of
7 Planning with respect to costs of remediation,
8 cost of adding the third floor, the other
9 cost-related and measurement-related issues
10 referenced in the Office of Planning report.

11 Would Board Members like
12 additional information, as I really think this
13 should probably be, you know, the final
14 submission in this case with respect to any
15 unanswered questions that others have in order
16 to make an assessment of the economic
17 question, of the feasibility here.

18 MEMBER WALKER: Madam Chair,
19 Exhibit 31, submitted by the applicant, is a
20 further explanation of the sales price
21 analysis. And in that submission, the
22 applicant references an initial cost of the

1 building of \$800,000 for acquisition, holding,
2 shell construction and soil decontamination
3 costs.

4 And I think it would be useful to
5 the Board for a specific breakdown of the
6 \$800,000 for each of those items.
7 Additionally, that filing references total
8 development costs for four, six, seven and
9 eight units, but is not clear, to me, whether
10 the total development cost includes the
11 initial cost of \$800,000 referenced in the
12 first paragraph or whether that is in addition
13 to that \$800,000.

14 In addition, the applicant
15 references a reasonable developer's fee, but
16 it would be helpful to know the amount of the
17 developer's fee in the cost of each of the
18 units.

19 CHAIRPERSON MILLER: Others?

20 MEMBER DETTMAN: Madam Chair, I
21 have some remaining questions with respect to
22 the third story addition. And so I would like

1 to request a couple different filings specific
2 to that element of the building.

3 One is that I would be interested
4 to know what the inside of that third story
5 addition looks like. I believe at the hearing
6 we heard that the third story addition was put
7 on because of a need for additional meeting
8 space. I believe it says away from the
9 contaminants. And that's where -- and the
10 meeting space is associated with the church.
11 So I would like to know what the inside of the
12 addition looks like.

13 And in addition, I would like to
14 know when it was constructed, if there are any
15 permits required, copies of the permits and if
16 there was a Certificate of Occupancy required
17 in order to use that space following
18 construction, a copy of the C of O.

19 Additionally, It has been
20 demonstrated that four units is not
21 economically feasible, because the applicant
22 testified that four units, basically, one unit

1 per floor, there is no market for a unit of
2 that size.

3 What I would be interested to know
4 is what are the economics of all the different
5 combinations of four units that could be built
6 as a matter-of-right. And what I mean by that
7 is minus the third floor, which I do have some
8 questions about, I would like to know what the
9 costs of this project would be if you
10 constructed four units using only the first
11 and second floor.

12 Four units at a size that has been
13 demonstrated that there is a market in this
14 area for.

15 I guess my final comment is that
16 the reason why I have so much trouble
17 considering the numbers associated with the
18 four units is that as the applicant testified
19 that there is no market for four units of that
20 size and so I find it hard to consider those
21 numbers, because the applicant is saying well,
22 we would never build a unit that size.

1 And so it's hard to sort of use
2 that as an argument that there is no market
3 for these. We would never construct them, but
4 here are the numbers showing that it is not
5 economically feasible anyway.

6 VICE CHAIR LOUD: Madam Chair, I
7 wanted to weigh in briefly as well. First, I
8 just want to say that I think it's a
9 worthwhile project for me to have reviewed in
10 terms of the -- what the applicant is trying
11 to do. And I say that for a couple of
12 reasons.

13 First, it's a brown field and the
14 applicant is trying to convert it to
15 residential, which with my limited knowledge
16 of development, I know that that is difficult.
17 Often times brown fields are converted to
18 commercial use, because it is so much easier
19 to meet EPA requirements for commercial
20 redevelopment of brown fields than for
21 residential.

22 So in that sense, I applaud the

1 fact that they are trying to do residential.
2 But if I look at the variance test that I have
3 become familiar with as a result of being on
4 the Board and after consultations with my
5 colleagues, the numbers in Exhibit 33 -- I'm
6 sorry, in Exhibit 31 just don't make sense.

7 And were I to vote approval on
8 this, it would be because I found that there
9 was a practical difficulty caused by the --
10 for me, the exceptional situation would be the
11 existence of this, the fact that this land is
12 a brown field. And these numbers would have
13 redevelopment costs. And I'm just --
14 redevelopment costs for a four unit
15 development.

16 Then again, I'm looking at Exhibit
17 31 at about \$428 per square foot for a four
18 unit development, which again, I'm not a
19 developer, but the limited exposure I do have
20 to that arena is that those costs are just
21 extraordinary for renovation costs, \$428 a
22 square foot.

1 And even if you were to back out
2 the \$500,000 in alleged remediation cost, it
3 would come out to about \$357 a square foot,
4 which is still -- to me as a layperson, it
5 just seems extremely high and it's not
6 supported by the record. So sort of echoing
7 what Commissioner Walker has said, it would be
8 helpful for me to have an itemized breakout of
9 what their development costs are.

10 Because if that itemized breakout
11 substantiates for me that a four unit
12 development makes sense financially, then
13 there is no practical difficulty and I can
14 resolve that question in my mind a lot better.
15 But right now, there isn't enough backup
16 information to substantiate these
17 extraordinarily high development projects.

18 Along with my colleague,
19 Commissioner Dettman, these -- the information
20 presented to us at four units are that these
21 units are about 1,800 square feet, 1,760
22 square feet. But again, you could almost chop

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1 that up into two 900 square foot units and
2 have more units to market and be under -- be
3 within matter-of-right.

4 So there are a lot of gaps, I
5 guess, in the information. It would be
6 helpful for me to have a great appreciation of
7 what their costs are at four units, what their
8 real costs are itemized at four units, so that
9 those kind of comparisons could be made.

10 MEMBER WALKER: Mr. Loud
11 referenced a \$500,000 cost of the
12 environmental cleanup and that was testimony
13 that referenced testimony from the hearing.
14 It would be very useful for me to know what
15 that -- specifically, what that \$500,000
16 entails and whether all of the environmental
17 cleanup is finished.

18 In the application at Exhibit 21,
19 the applicant made reference to \$500,000, but
20 it says that it is to cleanup the basement
21 over a four year period. And so I just want
22 to understand whether the \$500,000 is for soil

1 decontamination, you know, just what exactly
2 that \$500,000 covers.

3 CHAIRPERSON MILLER: Anything
4 else? Yeah, I think the bottom line is
5 Exhibit 31, you know, makes a statement at the
6 end that the project is only feasible using
7 the eight unit model. And you know, if this
8 is true, that's a good reason certainly for
9 the practical difficulty test, but I think the
10 Board is saying that we can't just accept
11 these numbers without really understanding
12 where they are coming from and really being
13 shown that the matter-of-right is not
14 economically feasible.

15 So I think that we have given
16 enough guidance to the applicant on this
17 issue. So I would suggest we leave the record
18 open for the applicant to address this. I
19 think we could leave the record open if Office
20 of Planning wants to weigh in, but I don't
21 know that we actually would require it.

22 I think we know what we are

1 looking for and if we see it, we'll see it.
2 But I wouldn't ever want to preclude them if
3 they wanted to.

4 Okay. So why don't we set a date
5 for deciding this case, which I think could be
6 September 9th, Mr. Moy, is that correct?
7 That's our first meeting in the fall?

8 MR. MOY: Yes, that's correct,
9 Madam Chair, that's doable.

10 CHAIRPERSON MILLER: Okay. And
11 then let's set a date for when the applicant
12 submission would be due.

13 MR. MOY: Well, given the summer
14 break to give the applicant -- allow
15 flexibility for time, I would suggest a filing
16 by Tuesday, September the 2nd.

17 CHAIRPERSON MILLER: Do we need
18 time in case the Office of Planning wants to
19 weigh in?

20 MR. MOY: Well, they do on the
21 same --

22 CHAIRPERSON MILLER: They have

1 time?

2 MR. MOY: -- time. Maybe that
3 Thursday or even as late as Friday, then staff
4 can supply their information to the Board.

5 CHAIRPERSON MILLER: Okay.

6 MR. MOY: If they file.

7 CHAIRPERSON MILLER: Okay. That's
8 fine, that's fine. All right.

9 MR. MOY: The applicant is making
10 some hand signals at this time.

11 CHAIRPERSON MILLER: Okay. The
12 attorney for the applicant is here. Do you
13 want to come forward and tell us something?

14 MR. GELL: I'm Steve Gell, the
15 attorney for Mr. Word. And I do want to thank
16 you for the opportunity to provide additional
17 information. I see that the Board isn't
18 satisfied with what we have provided. And I
19 would like to give Mr. Word sufficient time to
20 pull it together.

21 Some of the documents that he is
22 looking for go back 10 years when he started

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1 doing the remediation. And it was very hard
2 for him to find receipts and so forth, which
3 were asked for by the Office of Planning.

4 In addition, I think it might be
5 possible to have somebody else look at the
6 project and provide perhaps some additional
7 expertise in how to present this and also some
8 expertise in what these kinds of things cost.

9 I think it would be helpful to the
10 Board and given th summer recess and so forth,
11 I think it would be hard to find that person
12 within the time. I wonder if the Board could
13 give us an additional month?

14 CHAIRPERSON MILLER: You know, we
15 often try to schedule things sooner rather
16 than later, because --

17 MR. GELL: I understand.

18 CHAIRPERSON MILLER: -- applicants
19 are usually in a hurry to get going or
20 something. So you can -- it doesn't really
21 matter to the Board if you want one month or
22 two months, I don't believe.

1 MR. MOY: Yeah, the next Public
2 Hearing would be October, which would be
3 October the 7th.

4 MR. GELL: All right. So you will
5 do this as a preliminary matter in a Public
6 Hearing or would this be a decision meeting?

7 CHAIRPERSON MILLER: Well, we were
8 anticipating a decision meeting.

9 MR. GELL: Okay.

10 CHAIRPERSON MILLER: If all the
11 documentation was submitted to us, unless you
12 are suggesting that you are requesting a
13 hearing.

14 MR. GELL: No, I'm not requesting
15 a hearing.

16 CHAIRPERSON MILLER: Okay.

17 MR. GELL: I think the information
18 will speak for itself. So it can be in a
19 regular decision meeting. If that's October
20 7th, I think that will work. Mr. Word is not
21 here at the moment. I would like to be able
22 to ask him as well. But I think it would be

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1 to his interest to have that additional time.

2 I know he is anxious to get going
3 too, but obviously, there is a good deal of
4 work to do.

5 CHAIRPERSON MILLER: All right.

6 MR. GELL: So thank you very much.
7 If October 7th is the date --

8 CHAIRPERSON MILLER: Okay. So
9 what would be the date for the submission
10 then?

11 MR. MOY: Um, well, if I go into
12 the filing of one week prior, let's go with
13 September 29th, which is a Monday, to give you
14 the weekend.

15 MR. GELL: Right.

16 MR. MOY: And again, Office of
17 Planning we can still give to the end of the
18 week, Madam Chair. Okay.

19 CHAIRPERSON MILLER: Okay. Thank
20 you very much.

21 MR. GELL: Thank you very much.

22 CHAIRPERSON MILLER: We're ready

1 for the next case when you are ready, Mr. Moy.

2 MR. MOY: That Application would
3 be No. 17726 of Wisconsin Avenue Baptist
4 Church, pursuant to 11 DCMR 3104.1, for a
5 special exception to construct an addition to
6 an existing building to allow both the child
7 development center under section 205, and a
8 special exception to allow a private school
9 under section 206, in the R-1-B District at
10 premises 3920 Alton Place, N.W. This is in
11 Square 1779, Lot 824.

12 On June 17, 2008, the Board
13 completed public testimony, closed the record
14 and scheduled its decision on July 1st.
15 Anyhow, I would say July 29th. The Board
16 requested additional information to supplement
17 the record from the applicant, parties in
18 opposition.

19 The applicant filed -- made its
20 filing on June 27th, dated June 27th,
21 identified in your case folders as Exhibit 70.
22 Parties were allowed to respond to that

1 filing. We have filings from the ANC and the
2 party opposition, which is the families
3 neighboring the Wisconsin Avenue Baptist
4 Church.

5 The filings from the ANC, there
6 are two filings, one dated July 14th,
7 identified as Exhibit 71 in your case folders.
8 The second filing is dated July 17th,
9 identified as Exhibit 72. The first filing on
10 the 14th is not timely.

11 We also have in addition to the
12 July 15th filing of the ANC, there is a second
13 filing on the same date, which staff believes
14 is -- was filed for further clarification and
15 that is identified as Exhibit 75.

16 The parties were allowed to file
17 draft findings of fact and conclusions of law
18 from the applicant identified as Exhibit 76
19 from the party in opposition, that filing is
20 identified as Exhibit 77.

21 Lastly, the final filing is a
22 filing yesterday, July 28th, from the families

1 neighboring, which is the party in opposition
2 and staff believes that that is a motion to
3 the Board to reopen the record.

4 The Board is to act on the merits
5 of the special exception relief. That
6 completes the staff's briefing, Madam Chair.

7 CHAIRPERSON MILLER: Thank you,
8 Mr. Moy. Did you say that some filing was not
9 timely? Is that something we need to consider
10 waiving the rules for or no?

11 MR. MOY: The -- well, that's to
12 the Board's discretion. It's the Exhibit 71
13 from the ANC dated July 14th from Commissioner
14 Karen Perry and Cathy Wiss. They submitted
15 this document, comments in response to the
16 applicant's submission of June 27th. No,
17 strike that, strike that. The response to the
18 parties were due July 11th.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. All right. So we are okay on that. We
21 were planning to deliberate this case today.
22 We have a very full record here. However, we

1 did receive, I guess it came in yesterday and
2 Board Members just had a chance to look at it
3 today, a letter from certain neighbors who are
4 parties in this case. And Mr. Moy
5 characterized it as a motion to reopen the
6 record.

7 It alleges that there is new
8 evidence that was not put in the record by the
9 applicant regarding additional uses that are
10 going on at the church and that a major
11 consideration in this case is the intensity of
12 the use of the property and that this is
13 significant information that should be in the
14 record.

15 So what I would like to do, I
16 believe most of the parties are here or
17 represented, I would like to know who is here
18 in the case, if you could come forward, we
19 would like to hear from you about this record,
20 hear the applicant's response, hear the ANC's
21 response, if the ANC is represented today
22 here. So why don't you come forward, those of

1 you who are parties in this case?

2 Okay. Why don't we start with the
3 applicant introducing yourselves, please.

4 MS. BALDWIN: Good afternoon. My
5 name is Stephanie Baldwin. I'm with the Law
6 Firm of Greenstein, DeLorme and Luchs. And
7 with me is --

8 REVEREND BERGFALK: I am Lynn
9 Bergfalk, Pastor, at Wisconsin Avenue Baptist
10 Church.

11 CHAIRPERSON MILLER: ANC?

12 MS. WISS: Oh, sorry, I'm Cathy
13 Wiss, ANC-3F06.

14 MR. HIRSH: Steven Hirsh, H-I-R-S-
15 H. I live at 4415 39th Street near the
16 church.

17 CHAIRPERSON MILLER: Do you have a
18 signature on this letter or no?

19 MR. HIRSH: No, I was not
20 available to sign that letter.

21 CHAIRPERSON MILLER: Okay.

22 MS. CHESSER: Judy Chesser. I am

1 a signature on the letter. I'm 3901 Alton
2 Place, N.W.

3 MS. ROBERTS: I'm Pamela Roberts
4 and I am also a signature on the letter and
5 I'm at 3900 Alton Place.

6 MR. MEJIA: Jose Antonio Mejia,
7 3900 Alton Place, also. I signed the letter,
8 too.

9 CHAIRPERSON MILLER: Okay. And
10 just for our own clarification, the signatures
11 on the letter are some of them parties in this
12 case and some of them not or are they all
13 parties?

14 MS. CHESSER: I think they are all
15 parties.

16 CHAIRPERSON MILLER: Okay. And
17 you are also a party, but you missed signing,
18 right?

19 MR. HIRSH: Yes, I just wasn't
20 available to physically sign the letter.

21 CHAIRPERSON MILLER: But you agree
22 with the letter?

1 MR. HIRSH: I do, yes.

2 CHAIRPERSON MILLER: Okay. All
3 right. We have read the letter. I think what
4 I would like to do is turn to the applicant to
5 see if there is a response and then the ANC to
6 see if there is a response and then see where
7 we want to go with this.

8 REVEREND BERGFALK: We have not
9 received a copy of the letter.

10 CHAIRPERSON MILLER: Okay. It's
11 our Exhibit No. 78. Do we have a copy for the
12 applicant?

13 MS. CHESSER: Oh, they just passed
14 it.

15 CHAIRPERSON MILLER: Oh, you just
16 got it now? For the record, it's our Exhibit
17 78. As I stated, it's dated July 28, 2008.
18 And it is RE: New Evidence in Case No. 17726,
19 Wisconsin Avenue Baptist Church, 3920 Alton
20 Place, N.W., Square 1779, Lot 0824. And it's
21 signed by more than eight people who are
22 parties.

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1 MS. ROBERTS: Excuse me, could I
2 just say something?

3 CHAIRPERSON MILLER: Sure.

4 MS. ROBERTS: I just wanted to
5 confirm that I actually sent the email -- my
6 name is Pamela Roberts, 3900 Alton Place. I
7 sent an email out last night to the attorney
8 and also Lynn Bergfalk and I copied all of our
9 neighbors. And I'm not sure if the -- it
10 seems like the email didn't go through and I
11 didn't have Ms. Baldwin's email address to
12 send it out.

13 CHAIRPERSON MILLER: Okay. Why
14 don't we give them a moment to read the
15 letter. Let me just say, so you have a little
16 idea what -- you know, how much you need to
17 address this. It raises an issue that is
18 central to this case. And so therefore, the
19 Board will be considering whether to, as a
20 threshold question, reopen the record, take
21 this in, leave open the record for response
22 from you and the ANC. You don't have to fully

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1 respond today and postpone our decision to
2 September.

3 So that's really the threshold
4 issue. I'm not asking you to fully respond,
5 but if you have an opinion on that.

6 MS. BALDWIN: Reverend Bergfalk
7 would like to address some of the issues in
8 the letter.

9 REVEREND BERGFALK: I would be
10 happy to address these issues. EduSmart we
11 work with, when I say "we" the church has
12 always had summer youth employees through the
13 normal D.C. Program. Some of that has been
14 done in partnership with City Gate, which is--
15 I'm Executive Director for City Gate and the
16 pastor at the church.

17 We had a partner organization that
18 was working with EduSmart that needed a
19 placement for summer youth workers and this
20 came up the 1st of June. It is a -- and we
21 allowed them to come with a group. There is
22 probably about 40 or 50 kids who are

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1 participating on this. The first couple of
2 days there were more when they came over to
3 register.

4 It is -- was not disclosed or
5 listed, because it's not a program that is
6 scheduled. It came up at the last moment. It
7 is a one time thing. When I say one time, not
8 one event, but only for the Youth Employment
9 Program this summer. There is no continuing
10 relationship there. And the numbers are
11 within the numbers that we have talked about,
12 even though there is no cap in existence, at
13 this time, those numbers are still within
14 those parameters.

15 KYMS International -- Image
16 International is -- there is a woman who has
17 this organization. She brought over two girls
18 who participated in our summer camp and she
19 did a program in our summer camp called -- it
20 had to be -- well, your image matters sharpen
21 it.

22 And it was during the first week

1 of our camp, which was June 16th through June
2 20th. It involved two girls that she brought
3 to our program and she operated it as a guest
4 instructor. The third program listed here, DC
5 Alternative Learning Academy West was the
6 program that was in our church for two years
7 in 2001 and 2002, I believe, or concluding in
8 2003. That was an alternative school, which
9 we asked them to -- or we concluded that
10 agreement, because the program was not exactly
11 what we thought that it would be.

12 And when you have heard about --
13 complaints about buses and so forth, that goes
14 back to that program that ended, I believe, in
15 2003. And apparently this is still on the
16 books somewhere, but they have not been on our
17 premises for five years.

18 CHAIRPERSON MILLER: Okay. It
19 just raises a basic question that I would like
20 to ask you since you're here.

21 REVEREND BERGFALK: Um-hum, sure.

22 CHAIRPERSON MILLER: And the

1 record is still open. We are looking at the
2 intensity of use.

3 REVEREND BERGFALK: Um-hum.

4 CHAIRPERSON MILLER: And we are
5 looking at all the uses on the site.

6 REVEREND BERGFALK: Sure.

7 CHAIRPERSON MILLER: And I'm not
8 sure that the Board is going to go, for
9 instance, for this cap as an enforcement
10 mechanism or not.

11 REVEREND BERGFALK: Um-hum.

12 CHAIRPERSON MILLER: And if we
13 don't go for the cap, then what we would be
14 looking at would be numbers of participants in
15 different program using the property, like you
16 put on the record, you know, certainly for the
17 Co-Op, how many kids are in the Co-Op.

18 REVEREND BERGFALK: Um-hum.

19 CHAIRPERSON MILLER: How many
20 teachers, how many faculty. That is normally
21 what we look at. Students, participants and
22 then employees, numbers total, not how many

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1 people are coming in and out of the building.

2 So I know that's on the table and
3 this Board hasn't deliberated that yet. But
4 my question is it's not -- we're not just
5 looking at the school and the child
6 development center applications. In a vacuum,
7 we're looking at them in the context of the
8 church and the church does a lot of things and
9 has a lot of different programs. And we are
10 not looking to infringe on the church
11 programs.

12 But we are looking to know what
13 the parameter of that is, so that we can then
14 assess whether or not the others can be
15 approved as special exceptions.

16 So my question is when I see
17 something like this, then I'm wondering well,
18 oh, next summer you're going to have a new
19 program that is not reflected in our record.
20 But, you know, there are various ways of --
21 well, we want to know the best you can provide
22 us, the context, how many people are really

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1 using this property?

2 Is there a limit that you are
3 willing to present to us that is, you know,
4 real and so this -- I think the neighbors were
5 upset, because this wasn't in our
6 calculations. We are able to deliberate and
7 we didn't have these individuals.

8 Now, you are saying well, they are
9 a one-time thing. We don't need them
10 basically. But are there going to be other
11 one-time things or, you know, how do you
12 intend to proceed with that issue?

13 REVEREND BERGFALK: I don't think
14 there is anything that has happened or will
15 happen at our church that is not typical of
16 churches in Northwest D.C. And in fact, I
17 mean, we would only wish that people were
18 actually able to come to the facility and see
19 for yourselves the level of use and so forth.

20 There have not been parking
21 issues. The use is well within the capacity
22 of the building. It is less than some

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1 neighboring congregations. So I am just
2 saying there is nothing here that is unusual.

3 CHAIRPERSON MILLER: I think
4 what --

5 REVEREND BERGFALK: And I want to
6 answer.

7 CHAIRPERSON MILLER: Okay.

8 REVEREND BERGFALK: To answer
9 your --

10 CHAIRPERSON MILLER: Okay. What's
11 unusual though is the new special exceptions
12 that are going to go with it.

13 REVEREND BERGFALK: Right, right.

14 CHAIRPERSON MILLER: And that's
15 why we are scrutinizing more --

16 REVEREND BERGFALK: Sure.

17 CHAIRPERSON MILLER: -- like how
18 much activity there is.

19 REVEREND BERGFALK: Okay.

20 CHAIRPERSON MILLER: And they are
21 sharing the same parking lot, correct?

22 REVEREND BERGFALK: Yeah.

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1 CHAIRPERSON MILLER: Okay.

2 REVEREND BERGFALK: And there is--
3 and the parking studies are showing that even
4 the 28 space lot is more than adequate for the
5 programs that are proposed with the caps that
6 have been suggested.

7 We would see the kind of program
8 that this is a one-time program. The other
9 two are irrelevant. I mean, the -- what the
10 KYMS, you know, a guest teacher came in with
11 two kids and had the opportunity. I
12 advertised that on her website as she wanted
13 other kids to come in.

14 The Alternative Learning Academy
15 hasn't been there for five years. So I think
16 the only question is EduSmart. This is a one-
17 time thing. We would consider that to be
18 under whatever cap is established. So if
19 there is -- if there were room in a summer
20 program for those spaces, I suppose, you know,
21 we would -- unless we are told, you know, that
22 that's not something that we can do.

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1 You know, we think the 97 cap is
2 very modest actually for our facility. But we
3 would honor that and we would honor the 291.
4 Any -- for any community program that either
5 is included in the special exception or, you
6 know, if it's not CommuniKids or the Co-Op or
7 the conservatory, but is the same type of
8 activity, of course, that would be under that
9 cap.

10 And I should add that the numbers
11 that are at the program, at these combined
12 programs this summer are under the 97 figure.

13 CHAIRPERSON MILLER: Okay. So
14 your response is to look to a cap as opposed
15 to, you know, being open to whatever programs
16 you might want to start at the church?

17 REVEREND BERGFALK: Well, I think
18 there are two separate questions. You know,
19 there is the questions of what are by-right
20 ministry activities of the church, which I
21 understand are, you know, related to First
22 Amendment issues, no excessive entanglement,

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1 free exercise and so forth.

2 Then there are community programs
3 where, you know, we need to seek a special
4 exception, which is what we are doing. Now,
5 I guess there is a gray area, because I know
6 many churches have the same experience that we
7 do. They have groups that come and will use
8 the facilities for a day or for a week or for
9 -- I mean, that's a typical kind of thing.

10 I guess we are willing to consider
11 outside community activities under the caps
12 that have been proposed and which the ANC and
13 the neighbors agreed to.

14 CHAIRPERSON MILLER: All right.
15 Are there other Board questions right now or
16 we can hear from the other parties. Ms. Wiss,
17 are you ready?

18 MS. WISS: Thank you. In the
19 ANC's filing, which I was told by the staff at
20 the time was timely, we did mention that there
21 have been other activities. The ones that
22 have come to light between the hearings and

1 our filing were the Eleanor Holmes Norton, our
2 Delegate to Congress, had a community meeting
3 there, so that it is clear that there are
4 other things going on.

5 I also know that the Washington
6 Revels, which is a production company, it has
7 about 100 people, was rehearsing there at one
8 point. They are not doing so any longer.
9 Their comment to me was that Reverend Bergfalk
10 is very accommodating, you know, and this is
11 what I see here. It's very accommodating if
12 somebody needs the space, you know, fine, come
13 on and use it.

14 That's generous, but also it does
15 have an affect on the neighborhood. I have
16 been hearing from neighbors, not talking about
17 parking exactly, but that there are a lot of
18 kids hanging out in the alleys smoking dope
19 and suddenly there is this big influx this
20 summer. And then I got a call from Judy
21 Chesser saying that there was this youth
22 program going on at the church.

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1 Now, I don't know, but it's
2 entirely possible that the two are connected.
3 So it seems to me that there does need to be
4 some sort of control on all of the activities.
5 Being accommodating is great, but you have got
6 a request to have a special exception to have
7 97 people in this building, which is just a
8 few fee away from people's houses from 9:00 in
9 the morning, but possibly earlier if they have
10 preschool times, because it keeps getting
11 extended, until 9:00 at night and maybe later
12 from Monday through Friday and then all day on
13 Saturday. And it's a very small tight area in
14 an R-1-B Zone.

15 I do have to say I passed the
16 church two Sundays ago at 10:00 or 11:00 in
17 the morning. I can't exactly remember exactly
18 what time, but sometime between 10:00 and
19 11:30 and was really surprised to see that
20 when church is supposed to be in session,
21 there were about four cars parked on Alton and
22 some of them were neighbors' cars and the van

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1 that is always parked in the lot, but
2 otherwise no one was parking there. And this
3 was when church is to be going on.

4 I think one of the questions here
5 is really how much is really church work and
6 how much of this building is just being used--

7 CHAIRPERSON MILLER: Ms. Wiss,
8 though, let's not get too far off subject.

9 MS. WISS: Okay.

10 CHAIRPERSON MILLER: I think
11 really the point, the threshold question here
12 is, you know, this going to be all the
13 information that we need in the record now?
14 And then we can reopen the record, take in the
15 letter, if the Board decides that it's, you
16 know, relevant. And then we will be ready for
17 hearing or is there more, something related to
18 anything else that needs to be done in this
19 case.

20 MS. WISS: Well, I don't know
21 about any more groups that are meeting there,
22 but I do think that you need to take into

1 consideration that there are more groups than
2 what we know about and that they do have an
3 impact.

4 CHAIRPERSON MILLER: There are
5 more groups than that is reflected on that
6 chart?

7 MS. WISS: Than what we heard
8 about at the hearing.

9 CHAIRPERSON MILLER: At the
10 hearing. Other than what -- are you saying
11 there is more than -- other than what's in
12 this letter?

13 MS. WISS: I don't know.

14 CHAIRPERSON MILLER: Or you don't
15 know?

16 MS. WISS: The neighbors live
17 closer and have more information than I do.

18 CHAIRPERSON MILLER: Okay. So do
19 you want to say anything more?

20 MS. CHESSER: Yes, it seems like
21 that question, both as to current use and
22 future use, is -- needs to be addressed to the

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1 applicant. But I interviewed the participants
2 in the EduSmart Program, which is how I found
3 out about this, because they were all sort of
4 wondering around, and they said that there
5 were 120 individuals in the program and they
6 were in like three different rooms. They were
7 very helpful.

8 And they seemed to have gotten
9 there in June and I guess they are going -- I
10 don't know how many weeks, but it appears it
11 is most of the summer. So it's a one-time
12 use, but it's the summer. And there is --
13 supposedly, there is already like 70 people
14 there for the two summer camps. So 120
15 EduSmart comes to 190 at a time, which is not
16 at all honoring the cap of 97 at a time. It's
17 about 100 beyond that.

18 And that doesn't count, you know,
19 KYMS and he indicated that a lady came from
20 KYMS and brought two people with her, but she
21 also advertised to bring in additional
22 students. So did addition people arrive as

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1 well because of that advertisement? I don't
2 know.

3 But there seems to be a real gap
4 in the whole idea of these numbers that the
5 Board might impose to cover everybody, that
6 one-time use per one summer somehow doesn't
7 mean it is outside the cap. You know, there
8 seems to always be a reason why something
9 doesn't count under the cap at any given
10 moment.

11 And so that's a huge concern to
12 us. And as far as some -- being disruptive on
13 the neighborhood, Cathy is correct. There
14 didn't seem to be any supervision. They were
15 just wondering around the neighborhood, which
16 was why I was like who are you with?

17 And Pamela wanted to comment on
18 something that occurred.

19 MS. ROBERTS: Just quickly and
20 this was, I think, immediately after the
21 hearing that we had before. There was a
22 police incident just outside the door and we

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1 have been trying to get the police report, but
2 for some reason we're having difficulty
3 getting the actual report to submit.

4 But there were three or four
5 police cars that needed to come, because of an
6 altercation between some of the students. And
7 it was very disruptive. My nanny was in the
8 house and there was just stuff going on.

9 CHAIRPERSON MILLER: We don't
10 really want to get to the --

11 MS. ROBERTS: Okay.

12 CHAIRPERSON MILLER: -- merits too
13 much any more.

14 MS. ROBERTS: Okay.

15 CHAIRPERSON MILLER: It's just to
16 me it was number one, does the applicant have
17 an objection to this letter being placed in
18 the record or the request to reopen the record
19 to have this letter.

20 REVEREND BERGFALK: Madam Chair,
21 first of all, we would apologize if there was
22 some temporary activity that should have been

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1 included in our filing, because it was not our
2 intention to leave anything out that should be
3 shared. I think you could talk to any
4 representative of the church and you will hear
5 that there are occasional programs that -- and
6 it's part of a vision for ministry and for
7 serving the community.

8 I really fail to see, I guess
9 personally, the relevance of -- I understand
10 the question about intensity of use and I want
11 to address this. And this is one of the things
12 that have been very frustrating to us, because
13 the amount of misinformation and exaggeration
14 is significant and it may be well-intentioned.
15 I'm not casting any aspersions.

16 But right now, this summer, if you
17 were to go over to our facility today, we
18 would have 15 children in our church camp.
19 There would be about 15 kids, probably no more
20 than 20, in the CommuniKids Camp. And there
21 would be about 40 to 50 youth in this program,
22 the Youth Worker Program.

1 Now, there is not currently a cap,
2 but if there was, those numbers would be under
3 that cap. And we would be happy to have folks
4 come to the church at any time. Now, I know
5 that when we are working with summer youth
6 workers, some of those young people come from
7 other parts of the city.

8 I know that neighbors sometimes
9 are nervous about churches and their role in
10 community ministry. There was an incident
11 that happened in the first week and we
12 addressed that with EduSmart. It was not a
13 significant problem. It was taken care of.

14 But the numbers here, there is
15 really nothing that changes the information
16 that was submitted on the charts.

17 CHAIRPERSON MILLER: Let me ask
18 you.

19 REVEREND BERGFALK: Sure.

20 CHAIRPERSON MILLER: I mean, I
21 don't want to dwell on this too much in the
22 sense that I think since you have addressed it

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1 so much, that I would suggest that it be in
2 our record, that all of this be in our record
3 and we can move off that question.

4 It just raises an issue in my mind
5 when I had evaluated all the programs that
6 we're seeking or the child development center
7 applications. I was evaluating it in a
8 context of what was going on at the church.
9 And the Board is not in a position where it is
10 going to infringe on the right of the church
11 to have its programs.

12 REVEREND BERGFALK: Um-hum.

13 CHAIRPERSON MILLER: On the other
14 hand, we were under the impression that we had
15 all the information we needed to know to
16 assess the intensity of use like how many
17 programs were going on at the church or
18 whatever. So I just -- you know, and some of
19 those programs may change over time. So if
20 we're looking at the programs that have been
21 represented, there is no guarantee that those
22 are going to be the programs for even five

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1 years, that there may be other programs,
2 correct?

3 REVEREND BERGFALK: Are you
4 speaking about the programs that --

5 CHAIRPERSON MILLER: Church
6 programs.

7 REVEREND BERGFALK: Oh.

8 CHAIRPERSON MILLER: Not the
9 special exception applicants.

10 REVEREND BERGFALK: You know, our
11 church is like any church. I mean, it's a
12 dynamic faith community. So programs change,
13 but the church programming, there is very
14 little, if any, church programming during the
15 day. It's primarily on weekends and some on
16 evenings.

17 The only footnote to the
18 discussion that has occurred with the
19 intensity of use, this is the summer. The
20 conservatory is only giving two or three
21 lessons. The Co-Op doesn't meet. So, you
22 know, we didn't realize there would be any --

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1 that there would be any issue at all with
2 this. The numbers are well under what is
3 expected.

4 CHAIRPERSON MILLER: You know, I
5 just think that, you know, we need to tread
6 carefully when we are talking about any
7 limitations on a church. And so I see these
8 two issues as somewhat separate, that the
9 application for the special exceptions, they
10 are not church-related. They are child
11 development or they are schools.

12 However, we have to evaluate it in
13 the context of the church's presence. And so
14 we just -- I don't know if -- and you're
15 talking about a cap and I just want to be
16 clear. You're talking about a cap in the
17 church of the number of people who use the
18 church as opposed to the building for which a
19 special exception is being sought? Are you
20 talking about the whole property?

21 REVEREND BERGFALK: I mean, I
22 don't know of any church that has a cap. We

1 are applying for a couple of special
2 exceptions and we understand that those
3 activities need to be capped appropriately for
4 parking and space, traffic issues.

5 CHAIRPERSON MILLER: So you are
6 not talking about a cap of people using the
7 property at the same time?

8 REVEREND BERGFALK: No.

9 CHAIRPERSON MILLER: No. Okay.

10 REVEREND BERGFALK: No, no.

11 CHAIRPERSON MILLER: And just one
12 last question on this. Is there any kind of
13 number, I don't know if -- that you want to
14 offer or not, because it's, you know, the
15 church, you know, but as far as that we would
16 know that well, no more than 500 people are
17 going to be using the church a day or
18 something like that. Is there any number we
19 look at or we just have to recognize that this
20 is a church that has a lot of programs and
21 activities and we can't put a number on it,
22 you know?

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1 REVEREND BERGFALK: Well, I would
2 simply put it in the context that, I mean, if
3 St. Columbus could do that, if St. Paul's
4 could do that, I suppose that we could do
5 that. I know that our uses are lower than
6 probably those congregations. St. Paul's has
7 two preschools. I think from a First
8 Amendment standpoint that's excessive
9 entanglement.

10 CHAIRPERSON MILLER: No, we don't
11 want to go there.

12 REVEREND BERGFALK: Yeah.

13 CHAIRPERSON MILLER: But I just
14 want to say this, because this is what is
15 giving me pause is this, I have this whole
16 chart that has all the different programs, you
17 know, that are going on at the church, you
18 know, ESL and Bulgarian School and whatever.
19 And you know, I don't -- we're not going to
20 touch what you do, you know.

21 REVEREND BERGFALK: Um-hum.

22 CHAIRPERSON MILLER: And so but I

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1 get these numbers like oh, there are 20 in
2 this and 50 in this and my question is what do
3 we do with those numbers? I mean, are they a
4 basic forecast of the future or are they just
5 a moment in time now? You know, how much can
6 we look to those numbers?

7 REVEREND BERGFALK: Well, those
8 numbers and we submitted a chart that actually
9 gave you a running tally so that you can see
10 how many people were on the -- at the facility
11 at any one time and what the cumulative
12 results would be.

13 CHAIRPERSON MILLER: Exactly. But
14 my question is it might --

15 REVEREND BERGFALK: Is that going
16 to be accurate in 10 years from now or 20 --

17 CHAIRPERSON MILLER: Yeah.

18 REVEREND BERGFALK: -- years from
19 now?

20 CHAIRPERSON MILLER: Five years
21 from now? How should I know.

22 REVEREND BERGFALK: I would say

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1 probably it would be fairly accurate within
2 five years. I would hate to -- and I, you
3 know, hope that the church grows and it does
4 grow some in its own ministry. Now, if that
5 happens, then the special exception uses may
6 have to, you know, leave.

7 We are limited by our own parking.
8 The parking has never been an issue. And the
9 reason there are open spots in the parking lot
10 is because there also are plenty of spots,
11 street parking spots. Where there is a
12 parking issue is Ward 3 commuters with
13 stickers.

14 We are limited by the size of the
15 building. We are obviously not going to have
16 more people in the building than we could --
17 we're not even close to that. And as Jeff
18 Jennings said in his testimony here on the
19 17th, he never heard of our address. He said
20 I've heard of many addresses, many complaints,
21 but I never heard a word about Wisconsin
22 Avenue.

1 CHAIRPERSON MILLER: Okay. All
2 right. We don't want to get too much into
3 this.

4 REVEREND BERGFALK: Okay. I'm
5 sorry.

6 CHAIRPERSON MILLER: I just wanted
7 to understand those numbers better. Mr.
8 Dettman?

9 MEMBER DETTMAN: Madam Chair, if I
10 could just say something. It seems to me that
11 it would be we're at an appropriate spot where
12 it sounds like we are going to be requesting
13 additional information from the applicant. I
14 get the feeling we won't be deciding this
15 today. And so like you said, before we get
16 too much into the merits that have been gone
17 over in the hearing, we might start to define
18 what information we are going to be asking
19 from the applicant and sort of move on from
20 there.

21 CHAIRPERSON MILLER: Okay. We
22 probably, yeah, should wrap this up. I think

1 as I was saying, it's giving me pause and I
2 think it's giving others pause. It's just a
3 new piece of this, you know. We could -- if
4 there is more to say, I don't know, the
5 applicant has kind of addressed this. My only
6 question was, I used -- you know, we prepared
7 for deliberation today and I did look to those
8 charts and numbers.

9 And so I guess we could, if people
10 want to address this in writing, move on to
11 our other decisions, you know. How reliable
12 are those numbers? How constant will they be?
13 You know, what guarantees do we have, you
14 know, in using them and assessing the
15 intensity of use of the property that impacts
16 our consideration of whether it is an
17 appropriate location for the two special
18 exception uses.

19 Do others have a question beyond
20 that?

21 REVEREND BERGFALK: Madam Chair,
22 could I ask a question? I'm not sure what

1 additional information we can present.

2 CHAIRPERSON MILLER: That's all
3 right. If you could kind of answer that
4 question, yeah.

5 REVEREND BERGFALK: We have
6 disclosed all of the groups. There is only
7 one question that comes up now, it's during
8 the summer when the other uses are not meeting
9 or greatly reduced. It's maybe 50 kids that
10 are there. It is within the parameters that
11 we use. I'm not sure what you need.

12 CHAIRPERSON MILLER: You know
13 what, I think we rather than a filing, if I
14 might just ask one other question then. There
15 was, you know, the chart of all the uses that
16 you presented.

17 REVEREND BERGFALK: Um-hum.

18 CHAIRPERSON MILLER: How long has
19 the building been used, you know, in that way
20 by those uses or that intensity of use? Is
21 that reflective, in general, of a five year
22 period that hasn't really changed or is it

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1 greatly varied throughout the years?

2 REVEREND BERGFALK: It's fairly
3 stable. As you heard, five or six years ago,
4 we had an Alternative School, so the use
5 actually was more intense, at that point, and
6 somewhat disruptive. And we asked that group
7 to go.

8 Since then, the uses -- there has
9 been some growth. I mean, the CommuniKids and
10 Co-Op Programs started informally about five
11 years ago and so have grown and we came to
12 seek this process as soon as it was clear that
13 we needed to do that.

14 The Bulgarian group has been
15 meeting on Saturdays, probably for six or
16 seven years. The --

17 CHAIRPERSON MILLER: Okay.

18 REVEREND BERGFALK: -- programs
19 are fairly constant.

20 CHAIRPERSON MILLER: Okay. You
21 want to say one thing before we wrap this up
22 then?

1 MR. HIRSH: Yes, very briefly,
2 Madam Chairman. Thank you. I would just note
3 that there are, I can't say regularly, but
4 there are more than infrequently large
5 programs that pop up. So I think there was
6 testimony during the case earlier about a
7 choir that had 70 or 80 people. They did
8 these programs for oh, six months or several
9 months, then decided its too big for the
10 neighborhood or too big for the church and
11 send them away, only to have another one come
12 back.

13 So that comprehensive church
14 program chart while it may be comprehensively
15 recording what is there, is not at all
16 reflecting what is periodically coming and
17 what also may come in the future. Thank you.

18 REVEREND BERGFALK: Madam Chair,
19 if I may, I would like to say that we do not
20 agree with that characterization at all. The
21 choir, the one large choir that is true. They
22 are gone. Outside of that, I do not know of

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1 any other program that fits this concern.

2 MS. CHESSER: Excuse me. The
3 current program he is describing as a one-time
4 deal, the D.C. Youth EduSmart. You have
5 characterized the same way as the City Choir
6 of Washington, which, as I understand it, you
7 didn't exactly think was too big for the
8 building. They didn't like the bus for the
9 neon lights and they left.

10 So it wasn't that you ever looked
11 at any group and said it's too big for the
12 building.

13 CHAIRPERSON MILLER: That's in the
14 record though, right? The other uses? Okay.
15 Okay. At this point, it's the consensus of
16 the Board that we are going to reschedule this
17 for September 9th and just factor this issue
18 into our deliberation. And we don't need any
19 further filings. You all have fully filed and
20 responded to the questions that this letter
21 raised today.

22 So thank you very much.

1 MR. HIRSH: Thank you, Madam
2 Chair.

3 CHAIRPERSON MILLER: And have a
4 good summer. Okay. Mr. Moy, the next case,
5 would you call District-Properties, please?

6 MR. MOY: Yes, yes, ma'am. That
7 is Application No. 17774 of District-
8 Properties.com, LLC, pursuant to 11 DCMR
9 3104.2, for a special exception to construct
10 a new eight unit multi-family condominium
11 building under section 353 in the R-5-A
12 District at premises 930 Bellevue Street,
13 S.E., Square 5924, Lots 141, 142 and 143.

14 As the Board will recall on June
15 24th, the Board completed public testimony,
16 closed the record and scheduled its decision
17 on July 29th. The Board requested additional
18 information to supplement the record from the
19 applicant. That filing is in your case
20 folders identified as Exhibit 28.

21 The Board also got responses from
22 OP and the Department of the Environment. The

1 Board did receive a filing from DDOT, but the
2 staff notes that that came two days after the
3 Public Hearing on the 24th, Exhibit 27.

4 There is no other filings and the
5 Board is to act on the merits of the requested
6 special exception relief.

7 CHAIRPERSON MILLER: Mr. Moy, just
8 to clarify, did all the filings come in on
9 time?

10 MR. MOY: The filing for the
11 applicant, the deadline was July 17th. This
12 document is dated July 17, 2008.

13 CHAIRPERSON MILLER: Okay. Fine.
14 I'm going to let Mr. Loud start the discussion
15 on this one.

16 VICE CHAIR LOUD: Good afternoon,
17 Chair, and thank you. Again, this case to me
18 looks like a very good project. It was a
19 project after reviewing the file that I tended
20 to be in support of noting the evidence that
21 came before us, the difference agencies and
22 whatnot that were in support of it.

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1 It's essentially a new multi-unit
2 development in the R-5-A. It would, based on
3 the evidence before us, meet all of the
4 special exception in section 353 requirements
5 of when we are looking at the Office of
6 Planning report and look at the light and air
7 impacts and adverse impact or specifically the
8 lack thereof.

9 It is a project that would have
10 met those requirements. One of the
11 considerations that we put before the
12 applicant at the hearing was this whole issue
13 of having a rear egress identified for the
14 project. And the applicant was not available
15 at the hearing, but a civil engineer was
16 present.

17 So we placed that before him. We
18 also talked about some other things that in a
19 subsequent filing our Exhibit 28, all of which
20 were addressed, except for this issue of the
21 rear egress. So specifically, the applicant
22 redressed the -- addressed the revised

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1 landscape plan naming the specific plants and
2 their locations on the project, submitted the
3 lighting plan identifying again where they
4 would be located on the project.

5 There was specific information and
6 specs provided regarding the perimeter of a 4
7 foot 12 inch thick brick wall that enclosed
8 the rear parking area as well as the perimeter
9 of the property. But the whole issue of the
10 rear egress was not addressed.

11 And but for that issue, I would be
12 prepared to move forward in our deliberation
13 to move approval of the project. But the
14 revised plans, again our Exhibit 28, Drawing
15 7, the back elevation, still does not show a
16 rear egress for the project, unless I'm
17 missing something. Unless it's in there
18 somewhere.

19 So I would not be for denying the
20 project, because it has the support of the
21 Office of Planning at Exhibit 23, the
22 Department of Housing and Community

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1 Development at Exhibit 21, the Department of
2 Transportation at Exhibit 27. The ANC did not
3 submit a great weight report, but apparently
4 there is some dysfunction in that ANC as noted
5 in, I think, Exhibit 24, but the Single Member
6 ANC Commissioner did submit support for the
7 project. And I think that's at Exhibit 24.
8 And a neighbor on the block, also at Exhibit
9 24, expressed support for the project.

10 So rather than disapprove the
11 project, because they didn't respond to the
12 rear egress, I would recommend that we
13 continue it into the fall, give the applicant
14 an opportunity to come back and address that
15 issue.

16 I also wanted to note that when we
17 had the hearing, as I said, the applicant was
18 on vacation. He normally appears before us.
19 And his civil engineer appeared and I'm just
20 wondering if the real clear to the letter
21 instruction that we left for the civil
22 engineer somehow did not make it to the

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1 applicant.

2 So those would be my thoughts on
3 it. Again, I think it's a good project and I
4 hope that once that issue of the rear egress
5 is cleared up, we might be able to vote on it.
6 I defer to my colleagues.

7 CHAIRPERSON MILLER: I would
8 concur. I think that the egress issue is very
9 important. That may not exactly be a zoning
10 decision, but it seems like it's a safety
11 decision and it's one of those seemingly
12 Building Code decisions that I think the Board
13 is pretty familiar with, but in the event that
14 we were possibly wrong on that, we told them
15 to submit it.

16 But I think also in doing a
17 special exception, I wouldn't want to approve
18 a plan that I thought had some real safety
19 problems with it and I would hate to also see
20 this go forward and then come back to us at a
21 later date, which would delay the applicant
22 also.

1 I did check the transcript just to
2 make sure that we made that clear, that we
3 were concerned about the egress and for them
4 to look into it. And at page 72 of the
5 hearing transcript of June 24th, the
6 representative said, he is reiterating what he
7 has to submit next, and he says "landscaping
8 details, fence details, lighting details and
9 also the possibility of egress from the back
10 of the building. Am I correct?"

11 And you know, we said yes. And
12 then further on I said "And you mentioned we
13 may see a revised plan reflecting two forms of
14 egress, but it's something to check out for
15 sure." So I think that is the prudent course
16 to postpone this and have the applicant look
17 into the egress issue.

18 And I would suspect that the plans
19 may be revised, because he probably would be
20 adding that, unless we are mistaken. Others?
21 Okay.

22 Why don't we set a date on this

1 then? Would that be September 9th? Okay.
2 Let's do September 9th. And the calendar is
3 filling up for September 9th. Okay. And the
4 deadline for the submission would be?

5 MR. MOY: I think a week prior
6 would be sufficient, certainly from the
7 staff's point of view, which would be
8 September the 2nd. That would be ample time?

9 CHAIRPERSON MILLER: Yes.

10 MR. MOY: For the Board to review.

11 CHAIRPERSON MILLER: Okay. Great.
12 All right. Thank you. I think that concludes
13 17774, District-Properties.

14 MR. MOY: The next application,
15 Madam Chair, is in the final decision
16 application for the Board this morning. It's
17 Application No. 17786 of True Gospel Church,
18 pursuant to 11 DCMR 3104.1, for a special
19 exception to establish an accessory parking
20 lot under section 214, in the R-5-B District
21 at premises 1106 W Street, N.W., Square 303,
22 Lots 52 and 53.

1 On June 24, 2008, the Board
2 completed public testimony, closed the record
3 and scheduled its decision on July 29th. The
4 Board had requested additional information to
5 supplement the record from the applicant, so
6 the applicant filed and in your case folders
7 is the applicant's filing of Exhibit 29 and
8 Exhibit 30.

9 Staff would take the Exhibit 30
10 filing as a continuation of the -- his filing
11 of July 8th. Staff also notes for the Board
12 that in his filing of revised drawings and the
13 narrative text that the applicant made
14 revisions to the compact car spaces as
15 requested by the Board per section 2108.

16 Finally, there is a supplemental
17 report by the Office of Planning, dated July
18 24, 2008, and that document is identified in
19 your case folders as Exhibit 31.

20 The Board is to act on the merits
21 of the requested special exception relief and
22 that completes the staff's briefing, Madam

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1 Chair.

2 CHAIRPERSON MILLER: Thank you.
3 And I think Mr. Dettman is going to start off
4 on this one.

5 MEMBER DETTMAN: Thank you, Madam
6 Chair. I'll just quickly read how the
7 application was originally advertised. It was
8 for a special exception to establish an
9 accessory parking lot of 11 spaces under
10 section 214. And if you will recall at the
11 hearing, the Board, looking at the plans that
12 were submitted into the record at that time,
13 the Board had a lot of questions and showed a
14 little concern about the proposed curb cut
15 that was along W Street, as well as some
16 issues related to landscaping and screening of
17 the accessory parking space, which were also
18 concerns or recommendations posed by DCOP as
19 well as the ANC.

20 And so as the hearing progressed,
21 the idea came up that could the applicant seek
22 a reduction in the number of required parking

1 spaces associated with the new church. And
2 the Board provided the applicant with the
3 opportunity to go back, look at that
4 opportunity and just to clarify something that
5 Mr. Moy said that in the applicant's
6 supplemental filing, Exhibit No. 30, they did
7 make revisions to the plans.

8 However, they did not make
9 revisions to the compact car, but rather they
10 go ahead and they request a further requested
11 special exception under Article 2108.3 to
12 reduce the parking requirements. So it wasn't
13 the compact car or the size of the parking
14 space, but rather the actual number of
15 required parking spaces.

16 And so I guess how the relief
17 would be at this point is still a special
18 exception to establish an accessory parking
19 lot, but based on the revised plans, that
20 would be for 11 or 8 spaces instead of 11
21 spaces, as well as a request for a special
22 exception for a reduction in the required

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1 number of parking spaces under section 2108 in
2 the R-5-B District and still, of course, at
3 1106 W Street, N.W.

4 So we are seeking two types of
5 relief here.

6 CHAIRPERSON MILLER: All right. I
7 got the 2108. Is it also under 214 that you
8 are saying?

9 MEMBER DETTMAN: That's right.

10 CHAIRPERSON MILLER: For the
11 parking lot?

12 MEMBER DETTMAN: The two forms of
13 relief are --

14 CHAIRPERSON MILLER: Okay.

15 MEMBER DETTMAN: -- to establish
16 an accessory parking area for eight spaces
17 under 214, as well as a reduction in the
18 required number of parking spaces under 2108.

19 So just to sort of being the
20 zoning analysis, if you will, I would like to
21 start off with the reduction in the number of
22 parking spaces, so that we can get our hands

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1 around how many parking spaces are actually
2 required and then how those are sort of
3 distributed between on-site and accessory
4 parking area.

5 2108.1 states that "The BZA is
6 hereby authorized to reduce the amount of
7 parking spaces required for non-residential
8 uses under section 2101.1 in accordance with
9 the requirements of section 3104." The
10 applicant is requesting reduction in the
11 number of parking spaces for an existing
12 church that is going to be reconstructed.

13 Based on the anticipated size of
14 the main sanctuary of the new church, 24
15 parking spaces are required under 2101.1. The
16 applicant is requesting a reduction of two
17 spaces.

18 2108.2 states that "The amount of
19 required parking spaces shall not be reduced
20 by more than 25 percent." The applicant is
21 requesting a reduction, as I said, of two
22 parking spaces, which is only 4.2 percent.

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1 2108.3 "The Board shall give
2 consideration to several factors," and I'll
3 try to summarize best I can "the nature and
4 location of the structure." The proposed
5 church will be located on the southeast corner
6 of the intersection of 12th and W Streets.

7 Parking for 14 vehicles will be
8 provided on-site with eight additional parking
9 spaces in an accessory parking area located
10 across the existing alley. And as I said, the
11 applicant is also seeking relief for special
12 exception for the off-site accessory parking
13 under 214 and I'll address that shortly.

14 B says "The maximum number of
15 students, employees, guests, customers or
16 clients who can reasonably be expected to use
17 the proposed building or structure at any one
18 time." The proposed church is expected to
19 accommodate a maximum of 240 people in its
20 main sanctuary. This generates a parking
21 requirement of 24 spaces. So that's sort of
22 the required number of spaces.

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1 But in Exhibit 30, the applicant
2 states that the anticipated present attendance
3 to Sunday services is 200. So while the Board
4 is sort of required to operate under how big
5 the main sanctuary is, I think that there is
6 evidence that it will not be filled, in
7 general, to its maximum capacity.

8 C says "The amount of traffic
9 congestion existing or that the building or
10 structure can reasonably be expected to create
11 in the neighborhood needs to be considered by
12 the Board." The existing church has been in
13 existence for many years. And according to
14 the applicant, no additional traffic is
15 anticipated.

16 And as per DCOP's supplemental
17 report, a reduction of the required off-street
18 parking spaces could result in additional
19 traffic congestion as drivers search for a
20 place to park. However, according to the
21 applicant, although the church is designed to
22 accommodate 240 people, it is anticipated that

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1 the maximum of 200 people will be there at any
2 one time.

3 And in addition, there appears to
4 be, approximately, eight on-street parking
5 spaces along 12th or W Streets directly in
6 front of the church.

7 E says "The proximity of the
8 public transportation, particularly Metrorail
9 Stations and the availability of public
10 transportation services in the area or a ride-
11 sharing program approved by DDOT needs to be
12 considered." I think it's important to note
13 that the subject property is located within
14 three blocks of a Metrorail Station and is
15 also sufficiently serviced by Metrobus as per
16 DCOP supplemental report.

17 So that takes care of the
18 requirements under 2108. And I think that
19 based on the requirements of 2108, I think the
20 applicant's request for reduction of two
21 spaces is justified.

22 Moving on to if there are any

1 question, sure.

2 CHAIRPERSON MILLER: Well, just
3 about the process here. I don't remember if
4 they amended their application at the hearing
5 or if they went back and thought about
6 amending it. Do you know? I mean, I'm just
7 curious.

8 MEMBER DETTMAN: I was under the
9 impression that it was --

10 CHAIRPERSON MILLER: We discussed
11 it.

12 MEMBER DETTMAN: -- amended at the
13 hearing.

14 CHAIRPERSON MILLER: Yeah.

15 MEMBER DETTMAN: Yeah, I was under
16 the impression that it was amended at the
17 hearing.

18 CHAIRPERSON MILLER: You are?

19 MEMBER DETTMAN: Yeah.

20 CHAIRPERSON MILLER: I was just
21 noticing that the plans, they revised their
22 plans. And they indicate that they copied

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1 DDOT, Office of Planning and ANC-1B. It's
2 possible that they -- you know, it's a
3 question of how much, when an application
4 changes, notice should be required, for
5 instance, to like property owners.

6 So the nature is the same. It's
7 still special exception. It only changed by
8 two spaces. And I don't remember if there
9 were nearby property owners at the hearing,
10 but they were on notice of the hearing.

11 Anyway, we might just want to
12 waive notice to property owners on the ground
13 of, you know, good cause and no prejudice that
14 we are seeing in this. But I remember this
15 idea came up, because the Board thought that
16 this would actually be a much better plan and
17 would provide landscaping and things of that
18 nature. And there has been adequate parking
19 and they met the criteria.

20 Okay. So I guess it's the
21 consensus of the Board as a procedural matter
22 that we will waive notice to property owners

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1 and the ANC was notified. So, okay.

2 MEMBER DETTMAN: Okay. So if
3 there are no other Board questions with
4 respect to the requirements under 2108, as I
5 said, it appears, based on the record, that
6 the requirements of 2108 are met and that the
7 reduction of two parking spaces is justified.

8 So now, I think we have
9 established that instead of 24, there is 22
10 parking spaces that will now be required. And
11 as I stated, 14 parking spaces are going to be
12 provided on-site as per the revised plans.
13 What we are really looking at is an accessory
14 parking lot, which would be located just on
15 the other side of the existing 15 foot wide
16 public alley for eight spaces.

17 And that takes us into 214. And
18 214.1 states "Accessory passenger automobile
19 parking spaces elsewhere than on the same lot
20 or part of a lot on which any principal R-1
21 use is permitted shall be allowed as a special
22 exception by the BZA." And as I stated, the

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1 applicant is requesting relief to locate eight
2 required off-site parking spaces.

3 214.2 states "Accessory parking
4 spaces shall be in an open area or an
5 underground garage." The accessory parking
6 spaces are proposed to be located in an open
7 area. And no portion of the proposed parking
8 area will extend above the level of the
9 adjacent finished grade.

10 Point 3 "Accessory parking spaces
11 shall be located in their entirety within 200
12 feet of the area to which they are accessory."
13 I think at the most, the accessory parking
14 spaces will be maybe 100 feet away, so that
15 requirement is met.

16 Point 4 "Accessory parking spaces
17 shall be contiguous to or separated only by an
18 alley from the use to which they are
19 accessory." As I stated, the accessory
20 parking spaces will be located just on the
21 other side of an existing 15 foot wide public
22 alley.

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1 Point 5 "All provisions of Chapter
2 23 of this Title regulating parking lots shall
3 be complied with." And there are a lot of
4 provisions under Chapter 23. And I'll just
5 touch upon the two or three that I think are
6 relevant with respect to the benefits to the
7 revised plans.

8 2303.1 states that "A parking lot
9 in any District shall conform to the following
10 provisions:" and under 2303.1(a) "All areas
11 devoted to driveways, access lanes and parking
12 areas shall be surfaced and maintained with an
13 all weather surface."

14 I wanted to touch upon that one,
15 because according to DCOP's original report,
16 they had stated the applicant indicates that
17 the parking lot will be improved with an
18 impervious surface. During the public
19 hearing, DCOP mentioned that they talked to
20 the applicant and encouraged them to use a
21 pervious surface. And actually, I think they
22 included that as one of their conditions.

1 And according to the applicant, at
2 the hearing, he states that "When dealing with
3 pervious-type pavement, it is a little bit
4 more involved than just placing a surface of
5 pervious pavers and that there are questions
6 related to the makeup of the soil and how
7 water filters through the soil." And
8 basically, I got the impression that there is
9 a lot more that needs to be looked into in
10 terms of this particular site in order for the
11 applicant to utilize a pervious material for
12 the accessory parking lot.

13 And so I think the applicant has
14 satisfied 2303.1. They have indicated they
15 are going to use an impervious surface. And
16 I don't think that it is necessary that we
17 need to require them to use a pervious
18 surface. I think that that's a good thing.
19 I think it's a good recommendation by DCOP,
20 but clearly not a requirement.

21 2303.1(e) states that "Any
22 lighting used to illuminate a parking lot or

1 accessory building shall be arranged, so that
2 all direct rays of lighting will be confined
3 to the surface of the lot." The application
4 indicates that new pole lighting will be
5 arranged, so that all direct rays of the
6 lighting will be confined to the surface of
7 the parking lot.

8 And finally, with respect to
9 2303.1(f) states that "The parking lot shall
10 be kept free of refuse and debris and shall be
11 landscaped." I wanted to touch upon that,
12 because the ANC and DCOP showed some concerns
13 about buffering and screening around the site.
14 And in fact, DCOP's reservations about the
15 screening along W Street and the benefits that
16 we gained through elimination of the curb cut
17 and the increased buffering.

18 The applicant, of course, states
19 that the parking area will be kept free of
20 debris and landscaping. And it appears based
21 on the revised plans that it greatly exceeds
22 the 5 percent of the required landscaping.

1 So I won't go through --

2 CHAIRPERSON MILLER: Do you know
3 how much it is? I mean, it looks like it
4 does. Did you just say that it greatly
5 exceeded this based on your observation?

6 MEMBER DETTMAN: Well --

7 CHAIRPERSON MILLER: Or did they--
8 we have a number?

9 MEMBER DETTMAN: I think that at
10 the hearing, we heard testimony, and it may be
11 in DCOP's original report, that the original
12 plan met the 5 percent landscaping
13 requirement. The revised plans show an
14 increase and a substantial increase in the
15 amount of landscaping. So I would just assume
16 that the 5 percent threshold is met.

17 CHAIRPERSON MILLER: Right. I'm
18 looking at the first OP report and they said
19 that the applicant indicated it was a 10.7
20 percent. So it's greater than that, yeah.

21 MEMBER DETTMAN: Okay.

22 CHAIRPERSON MILLER: It looks good

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1 on the plan.

2 MEMBER DETTMAN: Yeah. So with
3 respect to the remaining provisions of 2303.3,
4 I would just state for the record that it
5 appears that the applicant meets those
6 provisions. And we can move on to the final
7 few provisions of 214.

8 And that takes us to 214.6 "It
9 shall be deemed economically impractical or
10 unsafe to locate accessory parking spaces
11 within the principal building around the same
12 lot. And I think 214.6(b) is the one that
13 applies, "restricted size of lot caused by
14 adverse adjoining ownership or substantial
15 improvements."

16 The lot on which the applicant
17 proposed to construct the new church is not a
18 sufficient size. That would accommodate all
19 22 required parking spaces now that we have
20 analyzed the reduction.

21 214.7 "Accessory spaces shall be
22 so located in facilities in relation to the

1 parking lot shall be so designed that they
2 will not become objectionable to adjoining and
3 nearby property." Based on the revised plan,
4 the accessory parking spaces don't appear that
5 they will become objectionable to the
6 adjoining nearby property.

7 As I said, there is a sufficient
8 amount of buffering from W Street as well as
9 the other sides of the accessory parking area.

10 And finally, 214.8 "Before taking
11 final action on the application for use as an
12 accessory parking space, the Board shall
13 submit the application to DDOT for review and
14 report." The original application was
15 referred to DDOT as well as the revised plans.
16 And no comments were received for either.

17 However, based on DDOT's typical
18 position of making sure that these types of
19 uses are adequately screened and they are
20 preferenced to minimize the creation of new
21 curb cuts and general support for the
22 reduction of parking spaces when areas are

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1 accessible to transit, I guess would be my
2 opinion, that DDOT would comment favorably on
3 this application, especially the revised
4 plans to eliminate the need for the creation
5 of a new curb cut along W Street.

6 DCOP was originally in support
7 with some conditions. I think that the
8 revised plans address all of those conditions.
9 They mainly went to screening. And ANC-1B
10 voted 9-0 in support of the application at its
11 April 3, 2008 meeting. They had recommended
12 that -- the use of screening to separate the
13 parking lot from the residential area of the
14 neighborhood.

15 I think that with the revised
16 plans that condition or that suggestion is
17 satisfied as well.

18 CHAIRPERSON MILLER: I'm just
19 looking at Office of Planning's proposed
20 conditions in their original report. One was
21 that there be a 4 foot high masonry wall on
22 the property along the W Street frontage of

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1 the lot. Is there shrubbery instead? Do you
2 know?

3 MEMBER DETTMAN: Sorry, Madam
4 Chair.

5 CHAIRPERSON MILLER: That's okay.

6 MEMBER DETTMAN: You mentioned
7 that in DCOP's original report?

8 CHAIRPERSON MILLER: Yeah. It's
9 our Exhibit 24.

10 MEMBER DETTMAN: That's No. 1?

11 CHAIRPERSON MILLER: Um-hum.

12 MEMBER DETTMAN: Um, that was
13 specific to the W Street frontage to screen
14 the parking lot and unless there is a
15 provision that I'm not aware of, I thought
16 when it comes to screening of parking areas,
17 the applicant has the option of providing a 4
18 foot high 12 inch thick masonry wall or an
19 evergreen shrub, I think based on the revised
20 plans.

21 CHAIRPERSON MILLER: Right. And
22 actually, we have a supplemental report from

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1 Office of Planning and I think they changed
2 it.

3 MEMBER DETTMAN: Oh, okay.

4 CHAIRPERSON MILLER: To use
5 evergreen shrubs to buffer the outside parking
6 lot from W Street. So they are satisfied with
7 that. Did you look at 31? It's the Office of
8 Planning supplemental report?

9 MEMBER DETTMAN: The supplemental
10 report, right.

11 CHAIRPERSON MILLER: Yeah. After
12 they talk about a wall, too, but that wall is
13 on the applicant's property and they say that
14 the revised plan indicates that the wall has
15 been located within the subject property.

16 MEMBER DETTMAN: Right. With
17 that, Madam Chair, I guess I'll turn it back
18 to the Board for questions. If there are no
19 questions, I'm prepared to make a motion.

20 CHAIRPERSON MILLER: I just want
21 to reflect I'm not sure whether you did that.
22 ANC-1B submitted a letter in support, it's

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1 Exhibit No. 22, and also recommending that
2 they use screening to separate the parking lot
3 from the residential area of the neighborhood
4 which they have done.

5 Anybody else have any comments?
6 And do we have a motion then?

7 MEMBER DETTMAN: I would move for
8 approval of Application No. 17786 of True
9 Gospel Church, pursuant to 11 DCMR 3104.1, for
10 a special exception to establish an accessory
11 parking lot for eight spaces under section
12 214, and a special exception for reduction of
13 required parking spaces under section 2108.

14 COMMISSIONER ETHERLY: Seconded,
15 Madam Chair.

16 CHAIRPERSON MILLER: Further
17 deliberation?

18 All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining? And would you
22 call the vote, please?

1 MR. MOY: Yes, Madam Chair. The
2 staff would record the vote as 5-0-0 on the
3 motion of Mr. Dettman to approve the
4 application as stated, seconded by Mr.
5 Etherly. Also in support of the motion are
6 Mr. Loud and Ms. Walker and Ms. Miller.

7 CHAIRPERSON MILLER: And this can
8 be a summary order as there is no parties in
9 opposition. Mr. Moy, I believe that concludes
10 all the items on the agenda for the Board's
11 Public Meeting. Am I correct?

12 MR. MOY: That's correct, Madam
13 Chair.

14 CHAIRPERSON MILLER: Okay. The
15 Board will be taking a break before getting
16 into the cases for the Public Hearing.
17 However, we understand that there is a case
18 that is scheduled for today's Public Hearing
19 and that is just seeking a continuance and we
20 have a consent motion on that. So we would be
21 very happy to entertain that motion at this
22 time and not have those parties wait.

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1 So why don't you come forward? Do
2 you want to call the case, MS. Bailey? It is
3 the Appeal No. 17725.

4 MS. BAILEY: As you indicated,
5 Madam Chair, it's the Appeal of Euclid of
6 Virginia, Inc., 17725, and it is pursuant to
7 11 DCMR 3100 and 3101, from a decision of the
8 Zoning Administrator by Zoning Determination
9 Letter dated July 6, 2007, to require BZA
10 special exception approval to allow the
11 operation of a gasoline station at premises
12 3710 Minnesota Avenue, N.E.

13 The applicant filed with us
14 yesterday a request for 90 days for the
15 hearing to be continued.

16 MR. DeCARRO: Yes, Members of the
17 Board --

18 CHAIRPERSON MILLER: Excuse me.
19 Why don't you have a seat.

20 MR. DeCARRO: Thank you.

21 CHAIRPERSON MILLER: And introduce
22 yourself for the record.

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1 MR. DeCARRO: Yes.

2 CHAIRPERSON MILLER: Okay.

3 MR. DeCARRO: My name is Thomas
4 DeCarro and I'm an attorney representing the
5 applicant/appellant.

6 MS. PARKER-WOOLRIDGE: Good
7 afternoon, Madam Chair and Board Members, my
8 name is Doris A. Parker-Woolridge. I'm an
9 Assistant Attorney General for OAG.

10 MS. PLEASANT: Good afternoon,
11 Madam Chair, Members of the Board, Assistant
12 Attorney General Shakira Pleasant also
13 representing DCRA.

14 CHAIRPERSON MILLER: Okay. I
15 think this is pretty straightforward unless
16 you want to tell us anything.

17 MR. DeCARRO: I think everything
18 we need to say is in the written motion
19 itself. And if there are any questions about
20 the proceedings or anything, I would be glad
21 to respond.

22 MS. PARKER-WOOLRIDGE: Madam

1 Chair, for the record --

2 CHAIRPERSON MILLER: Um-hum.

3 MS. PARKER-WOOLRIDGE: -- we just
4 learned that the Office of Tax and Revenue
5 have just approved or have just provided the
6 respondents' counsel -- appellants, I'm sorry,
7 with a list of addressees within 200 feet
8 radius of the gas station. That was one of
9 the holdups as far as filing the application
10 for the special exception.

11 CHAIRPERSON MILLER: Oh, okay.

12 MS. PARKER-WOOLRIDGE: And I
13 believe Mr. DeCarro could indicate as to when
14 the application will be filed with the BZA.

15 MR. DeCARRO: I don't see any
16 reason why it shouldn't be filed by next week.

17 CHAIRPERSON MILLER: Oh, so you're
18 going --

19 MR. DeCARRO: I was supposed to
20 have the --

21 CHAIRPERSON MILLER: -- to be
22 switching from an appeal to a special

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1 exception?

2 MR. DeCARRO: Not switching. What
3 we are trying to do is preserve our rights
4 under the appeal, but we have settled, we have
5 entered into a settlement agreement, which may
6 resolve the issues in this particular case,
7 assuming that the special exception goes the
8 way we expect it to go.

9 However, if it doesn't, then we
10 are trying to preserve our rights under the
11 original appeal, because, obviously, once
12 those -- you know, the hearing rights have
13 lapsed, then that's the end of your --
14 anyone's ability to consider the issues that
15 were raised.

16 CHAIRPERSON MILLER: Okay.

17 MR. DeCARRO: And so --

18 CHAIRPERSON MILLER: So you have
19 filed -- you're intending on filing a related
20 special exception application. It is not
21 filed yet, correct?

22 MR. DeCARRO: Right. Because we

1 just got the July 14th --

2 CHAIRPERSON MILLER: The list?

3 MR. DeCARRO: We got --

4 CHAIRPERSON MILLER: Okay.

5 MR. DeCARRO: -- the denial of
6 the, I guess, zoning approval that was part of
7 the revision of the application package. And
8 then the list, I think, was -- will be
9 obtained on Thursday. We were told it would
10 be made available on Thursday.

11 CHAIRPERSON MILLER: Do you want
12 this appeal to be in place until after the
13 resolution of the application.

14 MR. DeCARRO: Right.

15 CHAIRPERSON MILLER: Is that
16 correct?

17 MR. DeCARRO: That's correct.

18 CHAIRPERSON MILLER: So we need to
19 schedule this even further out than 90 days.

20 MR. DeCARRO: I would --

21 CHAIRPERSON MILLER: I believe.

22 MR. DeCARRO: -- that would be

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1 very helpful.

2 MR. MOY: Madam Chair, staff would
3 suggest rescheduling this to December 9th in
4 the afternoon at 1:00.

5 CHAIRPERSON MILLER: Okay. Sound
6 good to you?

7 MR. DeCARRO: I'll just take a
8 quick look at the old calendar here, if you
9 don't mind.

10 MS. PARKER-WOOLRIDGE: It's okay
11 with the appellee.

12 MR. DeCARRO: Yeah, that's fine.

13 COMMISSIONER ETHERLY: Madam
14 Chair?

15 MR. DeCARRO: I don't have
16 anything scheduled. That will be fine. We'll
17 see you on December 9th at 1:00. And I really
18 appreciate your taking this matter up.

19 CHAIRPERSON MILLER: Okay. Thank
20 you very much.

21 COMMISSIONER ETHERLY: Madam
22 Chair?

1 CHAIRPERSON MILLER: Yes, Mr.

2 Etherly?

3 COMMISSIONER ETHERLY: Just a very
4 quick question. No issues on the date, but I
5 just wanted to ascertain whether or not there
6 had been any further information from the ANC
7 with respect to this proceeding? Mr. DeCarro,
8 I believe you had indicated in your motion
9 that attempts were made to contact them, but
10 they were unsuccessful.

11 MR. DeCARRO: I have -- well, we
12 were unsuccessful in getting a response. And
13 we haven't -- my office was told to contact me
14 immediately if they got a response and I
15 haven't been contacted --

16 COMMISSIONER ETHERLY: Okay.

17 MR. DeCARRO: -- on my way down
18 here, so I would assume we haven't heard
19 anything.

20 COMMISSIONER ETHERLY: Okay.

21 Okay.

22 MS. PARKER-WOOLRIDGE: For the

1 record, I did contact ANC-7A, Pride Hiett, I
2 hope I pronounced that correctly, and he told
3 me to contact ANC-7A06, Jamal Turner. And we
4 sent an email. I called, tried to reach Karen
5 Settles at her numbers and left messages, but
6 we also sent Mr. Hiett as well as Jamal Turner
7 an email of the motion.

8 COMMISSIONER ETHERLY: Okay.
9 Thank you. Thank you, Madam Chair.

10 CHAIRPERSON MILLER: Okay.
11 Anything else?

12 MR. DeCARRO: Nothing further.
13 Thank you very much.

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 MS. PARKER-WOOLRIDGE: Thank you.

17 (Whereupon, the Public Meeting was
18 concluded at 1:30 p.m.)
19
20
21
22